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Among a group of houses in the lower part of the 344
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civil servants in Rowandus who are not under the direct surveillance of the qaimmaqam (although, in an extraordinary case, the qaimmaqam could probably obtain his transfer or dismissal), and is responsible to the Ministry of Justice in Baghdad from whence he was appointed. The administration of the civil code is charged to this ministry, rather than to a judiciary independent of the executive branch of government. It governs a Court of Cassation, four Courts of Appeal located at Baghdad, Basra, Kirkuk, and Mosul, fourteen Courts of First Instance (corresponding to the fourteen provinces) with unlimited powers, and forty-four Courts of First Instance with limited powers. These last are courts of single judges, and that of Rowandus provides an example. 692 ●

Thus the judge at Rowandus is restricted in the types of cases he can try and the sentences his court can hand down. He cannot, for example, give the death penalty, and cases for which this is possible are forwarded to Erbil for trial. On the other hand, his court must be sought for the multitude of everyday questions of marriage, divorce, inheritance, and lesser violations of the civil statutes. One or two examples will suffice to illustrate the usual type of case brought before him. Two merchants in Rowandus owned shops side by side, and one owed the other the sum of twenty dinars which he was unable or unwilling to repay. A heated argument ensued, and the creditor carried his case to the judge. The judge ruled in his favor, and the debtor's shop was padlocked and sealed [696] 691 696 [697].

The town of Rowandus, as has been noted, has a population of some 5,000 persons, the constitution of which shall be dealt with later. A town of this size qualifies as a municipality (Arabic, baladiya) and the gaimmaqam of Rowandus occupies, in addition to his own office, that of rais baladiya, a position similar to that of an American mayor, save that it is appointive rather than elective. Normally the rais baladiya in Iraq has a headquarters, comparable to the American city hall, and a staff of his own, including a treasurer and other officials. In Rowandus, however, there has not been any particular need for the institution of such a separate body, and "metropolitan" administrative requirements are met through zaiba or district facilities.

The problems presented by town administration appear to be very slight. Public order is maintained by the zaiba-police and minor violations of the civil code (few of the townspeople have recourse to "tribal law") as well as legal processes are handled directly by the judge. In comparison with the outlying districts, the town is relatively law-abiding, aside from a certain amount of juvenile pilfering. Quarrels among women are quite frequent, the cause most often a fight between their children. Such skirmishes begin with words ("prostitute" is a favorite), and degenerate to hair-pulling or an exchange of blows with kabkabs (a wooden sandal with a leather strap; in Arabic, qubqab or qabqab). The neighbors usually intervene, and rarely, if ever, does such a thing require official attention. Fighting between men is infrequent, but can become

to let Ahmed Beg know of their presence and visit his 622
diwanhane, or he will think they look down on his hospital- 574
ity, or, worse, do not know him or recognize him as a
chieftain."

Save for the question of hospitality, it may be seen 423
from the section on administration that the government 649
takes a strong interest in chieftains' activities. The
state lays claim to all unregistered land, emiriya, which
includes a large amount of "tribal" and village territory,
and would prefer to collect taxes directly from the pro-
ducers, thus cutting off the most important source of
aristocratic revenue. Some of the chieftains, abreast of
the times, have attempted to have tribal lands registered
in their own names. The execution of the law belongs to 649
the government, either the civil code of the judge or the 642
tribal code of the eshiresgen. Vengeance is also of the [692]
state, and homicides are to be handled by the police and
the courts, rather than the vendetta. Safeguard and
sanctuary in a well-policed district are thought to be
unnecessary. Modern Iraq is in concept democratic, and [559]
such titles as agha, beg, or shaikh, while they are widely
used, do not enjoy the sanction of law. The army and the
constabulary are thought adequate to handle military
exigencies, and the arming of a populace, particularly
parties of bodyguards, is considered superfluous, if not
dangerous. Thus the Kurdish aristocracy has lost many of 525
its important functions and perogatives. They are no longer 178
leaders in war or administrators, and much of their

8: Leach E-5 (1938) 1940 MA11 Kurd MA11
Rowanduz

probably at the instigation of the Agha, because he was held to have corrupted the morals of the youth. 609

Health services need not concern us. In the area studied 755
there is no resident doctor outside the city of Erbil.

The Government have made various experiments in agricultural reform chiefly with a view to improving the breed of livestock and the 695
quality of valuable crops such as tobacco. The Government's interest
in the improvement of the tobacco crop is especially relevant to the 249
area here described. Details will be discussed later but it may be
pointed out that Government assistance of this kind is not a
philanthropic enterprise. The heavy excise duty levied on all
saleable tobacco much more than repays any expenses incurred.

The independent judiciary functions through its court in
Erbil. In practice however it is in the nature of appeal court, 635
since in the first instance cases come before the Mudir (sub-district 691
magistrate) and then before the Qa'im Maqam (district magistrate)
before being referred to the court. I am not clear as to the rules
governing "appeal" to this court, nor as to the limits of sentence that
can be imposed by the magistrates' courts. So far as I know, only
serious cases such as homicide automatically go before the court at
Erbil.

During time of peace the military are stationed only at Erbil 695
and Rowanduz. There appears to be a general attitude of suspicion 101
and conflict as between the civil and the military authorities. In
this area the civil service is staffed mainly by Kurds and Turks and
is thus in general inclination Kurdo-phil. The army on the other 513
hand is staffed mainly by Iraqi-Arabs whose hatred and fear of the
"barbarous Kurd" can be taken for granted.

The Liwa is divided into several districts (Khaas) each 695
presided over by a district magistrate (Qa'im Maqam). Area A, Map 1
with which this account is mainly concerned lies wholly within the
Khaa of Rowanduz. The Qa'im Maqam is responsible for his district
in much the same way as the Mutasarrif is responsible for his Liwa.

The Khaa in turn is subdivided into several sub-districts
(nahiya) over which presides a Mudir. The Balik tribe all reside
within the nahiya Balik - the administrative district in this case
coinciding with the tribal one. Dargala on the other hand is
administered from Rowanduz.

The Mudir has in his direct control a number of policemen who
provide the direct liaison between the external authority and the
tribe. It is the venality of these junior officials which is the
worst feature of the system, and which is the real source of

8: Leach E-S (1938) 1940 MA11 Kurd MA11
Rowanduz

The Class Agha

The gund Aghas' relations to their tenants has now been defined; they in turn owe allegiance to the Agha of the taifa. This individual also may glibly claim to own all the land of all the gunds under his suzerainty, but his ownership is of a much more nominal variety than that of the gund Agha. The taifa Agha does not levy any specific charge upon his underlings but rather receives from them gifts in proportion to his usefulness. Thus Ismail Amin Agha of Nargusian, even though he belonged to the same tira as Shaikh Mohammed Agha of Balash head of the Hallashertifi and nominal paramount of all the Balik, did not admit that the latter was in any general sense his superior; though Shaikh Mohammed for his part claimed that Ismail Amin was his vassal. This discrepancy I think is only partly due to the recent loosening of political ties. In general it would appear that prior to the coming of the external administration the function of the taifa Agha was roughly that of arbitrator and court of appeal rather than dominating overlord. He seems to have been called in to arbitrate in small scale feuds, settle disputes between neighbouring villages over grazing rights and water, settle divorce disputes and so forth. For these services he would be suitably recompensed by the parties to the dispute.

This system of justice was doubtless exceedingly corrupt by European standards, but probably worked tolerably well. It is not clear what sanctions could be employed to enforce judiciary decisions of this sort. Today the claimant is encouraged to short-circuit the traditional machinery of the Aghas' courts and appeal for justice direct to the police. To some extent the two systems continue to operate side by side but with the continual lessening of the Aghas' authority litigation tends more and more to be a matter for the external administration only. I tried to obtain some opinions as to the relative efficiency of the old system and the new. The results were interesting. It was admitted that the decisions of the Agha in the old days were somewhat arbitrary, being based on considerations of wealth and nepotism rather than moral right, but at least a decision was arrived at quickly. The modern procedure on the other hand though plainly well intentioned is considered in practice to be slow, complicated and costly, and since the wealthier litigant can nearly always manage to appeal to a higher court if the first decision goes against him, the "justice" is nearly as one sided as before. Moreover it was argued that the police were just as corrupt as the Aghas with the disadvantage that, whereas formerly the Aghas were to some extent limited in their decisions by kinship obligations, the police had no interest at all except to sell justice to the highest bidder. Though this is certainly an overstatement of the case, many of the Iraqi police do appear to be exceedingly corrupt. So much so in fact that the new Qa'im Maqam of Rowanduz, chief magistrate of the district, was generally acclaimed by all as the almost unique example of a sincere

8: Leach E-5 (1938) 1940 MAll Kurd MAll
Rowanduz

617 and honest administrator. The venality of the junior police officers
692 has probably an important effect upon the economic status, and hence the influence of the Aghas. The position was put to me thus by Hamid Amin Agha of Dergala. "In the old days" he said "all my followers gave me presents; nowadays few can afford to, they must keep in well with the police and then they have nothing left for me".

622 In earlier times the tribe Agha was probably in a position to
721 organise small scale military activities; even today this would appear to be partly true. I was told for instance that in 1936 Ali Agha of Rayat, head of the Shevdini, had led his men across the border and sacked a Persian police post in reprisal for the latter having impounded some of his clansmens' cattle. Naturally such incidents are strongly disapproved of by the authorities.

The Tribal Agha

619 "In the case of the Balik, as we have seen, the Agha of the
622 largest tribe, Mallasherifi, is also Agha paramount of the whole tribe, and this is doubtless the normal rule. His function as tribal Agha does not ever seem to have amounted to very much except in time of war, in which case he automatically became leader of the whole group and doubtless received economic benefits accordingly. In time of peace he only receives small token payments, such as gifts of fruit and the like, from his more remote subordinates.

[711] The evidence concerning the actual behaviour of the Balik during the disturbed times of 1914-1920 is contradictory. Sheikh Mohammed asserts that he led his people to a victorious massacre of the invading Russian army; Hamid Amin of Rowanduz on the other hand says that Sheikh Mohammed ran away and that it was he Hamid Amin who saved the remnants of the Balik from annihilation and finally routed the Russians. Whatever really happened, it seems clear that Sheikh Mohammed as head of the Mallasherifi ought to have led the Balik to war, whether he actually did so or not.

The first effect of contact with the external administration was certainly to increase the influence of the tribal Agha at the expense of his fellows. Thus Bay Ingeneuely remarks (p. 67) "The tribal chief has many obligations towards his tenants and tribesmen, the most important of which is that he will become their spokesman in all matters which concern the Government". The British

[731] "Bay (p. 68) states that it is the custom to present the paramount chief with a pregnant ewe from every considerable flock at the beginning of the year. Bay however makes no distinction between tribes and clans and the obligation may be towards the Agha of the tribe rather than the subject.

693

693 LEGAL AND JUDICIAL PERSONNEL.—*specialized law-enforcement personnel other than police (e.g., sheriffs, bailiffs, constables, pursuers, coroners); attorneys at law (e.g., counselors, barristers); bar associations; justices of the peace; court officials (e.g., judges, prosecuting attorneys, public defenders, clerks, court reporters); grand and petit jurors, parole and probation officers, executioners; qualifications, selection, functions, and prerogatives of each; payment (e.g., fees, commissions, salaries); legal ethics, etc. See also:*

Police . . . . . 698 Legal education 974

a great number of animals, thus partially explaining the seemingly small figure for "animals" cited above. 235 [42]

In spring the Jutchig are on the move, leading their flocks of sheep and goats from winter pasturage around Mosul and Erbil to summer grazing in the hills and mountains. The passes and defiles are filled with their animals, an annoying impasse to swift communication, and their black tents line the watercourses and trails. As winter approaches they return once again from the uplands seeking the warmth of the Jazira plain. In former days their passage could often be turbulent. Because of his flocks, the Jutchig must get through, and was accustomed to fight a way if some peaceful could be found. Much of this has lately been changed, for police vehicles with automatic weapons are strong arguments against violence, and the construction of better roads has greatly facilitated movement, although the nomad still has the right of way after dark, and moving a vehicle through the sea of animals blinking in the headlights is difficult. Even then the Jutchig constitute one of the most difficult administrative problems of a police force such as that of Rowanduz. He must arbitrate their quarrels in passage (usually a sheep missing from the nomad, or transient flocks in a villager's field) as well as those they cannot settle among themselves. Lastly, as many cross the national border into Iranian Azerbaijan, the police of Rowanduz must arrange their transfer twice each year with the authorities of that country. 221 233 [625] [491] [493] [495]

existed for centuries. Today it cannot be denied that some 619
tribesmen, particularly the hejbir, belong to their group 631
because of kinship relation (the Kurdish term is ashîr, from [614]
Arabic, 'a'ilah, "tribe," is used to describe a tribal sub-
division still to be found which seems to represent a
patrilineal clan), while at the same time it is perfectly
clear that a great deal of membership is simply territorial.

It is important to notice that there are two main 671
bodies of criminal law in Iraq, a civil code administered
by judges appointed by the Ministry of Justice, and that
commonly called "tribal law," executed by local administra-
tive officers. The institution of dual legal systems was
evoked by the existence of Arab and Kurdish tribes some of
whose time-honored customs were, to say the least, out of
joint with the provisions of a modern, quasi-European code.
The differences between the two need not be considered in
detail. In general, "tribal" law is more lenient in some
respects, as in "justifiable" homicide (disposing of an
erring female relative), and more stringent in others, such
as adultery or rape. There are in the Rowandus district a
number of groups who can have recourse to tribal law, and
its administration is not charged to the local judge, but [693]
is an added task of the qaimmaqam. Hence the office of that 695
official in Rowandus has often the aspect of a courtroom,
the qaimmaqam and his clerk patiently and laboriously in-
quiring into the intricacies of some rural feud through
an interminable parade of witnesses--scarcely-dressed

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townspeople themselves, or to the government personnel, although most of its details are commonplace. Marriages between aristocratic houses often follow these alignments, although now and then a wedding is arranged which will join two houses not normally friendly toward each other. A chieftain with a number of daughters and sufficient wealth and prestige to attract suitors can build up quite a system of allies, thus increasing his own power, and the same can be done with a number of sons.

Turning to the townspeople, who in the first system constitute the mass of commoners, a rather confused social hierarchy is revealed. Several concepts are responsible for this, the first of which is that it is considered degrading for men of the "upper" class to work with their hands. The group of persons who are not so talented, in addition to the aristocracy, officials, and officers, thus includes among the people of the town the clerks, landowners, mullas or priests, and businessmen, such as the wealthier merchants and the owners of the *chaikhanes* and the hotel. Such a person is termed *effendi* or "gentleman," and occupies the highest ranks of the commoner group. Two examples are provided by Shaikr Effendi and Ra'uf Effendi, both landowners. In addition to their properties, Shaikr Effendi is the clerk of the judge's court and Ra'uf Effendi is the *mukhtar* or representative of the townspeople. The chief mulla of the town is addressed as "Mulla 'Abd-al-Karim Effendi." Literacy, a distinctive requirement of the

whenever they feel inclined, but members of the government elite avoid them. The wives and daughters of wealthier households rarely visit the women's mosque, perhaps because in some matters the women are far less domestic than the men.

It is commonly said that Islam has no priesthood, but at least one author has written an entire volume to disprove this thesis.[1] The functions of the mulla in Rowandus serve to support the latter view, for they are extremely similar to those of a Christian divine. The mulla in Rowandus have no other occupation, and are supported by funds provided by the townspeople. They are responsible for the maintenance of the mosque and the administration of awqaf, bequests to the faith. They conduct the services in the mosque, and officiate at such occasions as the naming of a child, circumcision, betrothal, and death. They have certain judicial powers, as noted in connection with divorce. On the other hand, they are not formally ordained, nor are they subordinate to any higher authority, although they may, if they choose, be attentive to such figures as, say, the Shaykh of Islam in Egypt or the Mufti of Jerusalem. There were three mulla in Rowandus in 1951, of whom the unofficial leader was Mulla 'Abd al-Karim Effendi, in charge of the great mosque and the control of awqaf.

There is no standard pattern for achieving the priestly office. In Kurdish Iraq a youth who has chosen

[1]Spencer, 1946.

Al Shamsan E-S (1997) 1961 MA11 Kard MA11

Within Islam the construction of marriage is signalised by two things: the drawing up of a marriage settlement and the wedding festivities.

The drawing up of a marriage settlement is, as Levy points out[91], the main—I am tempted to say the basic—feature of a contracted marriage. According to what my interpreter told me, a marriage settlement drawn up by Kaids in the urban milieu of Sidaimani demands the presence of four male members of the bride's family, the most important of whom is the bride's guardian, as a rule her father. Four male members of the prospective bridegroom's family, that is to say the groom and three others, must also be present. There is also a mufti and the qâdî by whom the marriage settlement is drawn up[92]. My interpreter informed me that the prospective bride might also be present, though closely-veiled and in a somewhat passive role. Whereas the bridegroom thus has no opportunity of seeing the bride until the marriage is consummated, the bride apparently is afforded a chance of seeing her future husband. I was also told that on this occasion she is asked whether she agrees and that it is then open to her to refuse to go on with the marriage, her father being unable to force her. According to the *shafi'i* rite the bride must agree to the marriage[93]. The marriage settlement is not concluded between the bride and bridegroom, but between the bride's wali and the bridegroom with the others present as witnesses[94]. The bridegroom agrees to pay the bride price, its size is finally fixed, and with it the decisive point: how great a part of it is to be immediately available, before the wedding, and how much is to be held back for payment in the event of a divorce, that is to say if a man repudiates his wife (a right not shared by the latter), or in case of the husband's demise. When my interpreter's sister contracted marriage, I was told that the sum set aside for the contingency of divorce or widowhood was not, as normally[95], a half or a third, but if I understood aright—nearly four times that sum paid out, 1500 Din. (1500). The paid up part of the bride price was 400 Din. — (400). This large sum my interpreter's family demanded guaranteed to secure the sister's marital position and to prevent any repudiation in the event of another wife[96]. I cannot say whether the sum was made larger than in fact it was in order to add prestige to the family's economic reputation.

With the drawing up of the marriage settlement the man, in addition to paying out the bride price, undertakes to support his wife, give her food, clothes, and attendance commensurate with the standard obtaining in her family home[97]. A breach of this marriage settlement gives the wife grounds for divorce. The other possibility a woman has to obtain divorce is the re-payment of the bride price. Apart from these instances the right to dissolve marriage lies with the man, who utters three times the word talâq, "I repudiate thee", or better, in Juynboll's[98] translation: "I renounce all rights over thee", as in some cases when drawing up the marriage settlement certain clauses, *sc'ûq*, can be inserted or attached so that definite lapses or positive actions on his part nullify his rights over the wife, thus providing her with one more possibility to obtain a divorce. On contracting marriage the wife undertakes to bear the husband children who belong to the husband, also in the event of divorce. Here it is true, the woman takes the children with her so long as they are quite small, but is obliged to send them back to the father's house when the boys are six and the girls eight years old.

As mentioned, the drawing up of the marriage settlement takes place at the qâdî, the judge. (It was stated that in the villages only the local mufti was necessary). This has caused Ostrorog[99] to declare that the drawing up of a marriage settlement is a civil act, advancing as proof of this assertion that